

160 208

ORIGINAL

# FEDEX PILOTS ASSOCIATION

1669 Kirby Parkway, Suite 202 • Memphis, TN 38120  
(901) 752-8749 / 1-888-372-4339  
Fax (901) 752-9097 / 1-888-542-8831  
e-mail: fedexpa@fedexpilot.org  
<http://www.fedexpilot.org>

**Via FDX (airbill number 8285-6496-1999)**

Docket Management System  
U.S. Department of Transportation  
Room Plaza 401  
400 Seventh Street, SW.  
Washington, DC 20590-0001

FAA 01-11032-24

Subject: Docket Number FAA-2001-11032; Amendment No. 25-106 and 121-288. Security Considerations in the Design of the Flightdeck on Transport Category Airplanes

18 March 2002

Ladies and Gentlemen:

The FEDEX PILOTS ASSOCIATION (FPA), advocating for the security interests of approximately 4,200 professional domestic and international airline pilots, has reviewed the referenced Final Rule and does not concur with the language of the final rule. While we support the underlying intent behind the initiative to strengthen cockpit doors, we believe that it is imperative to point out some specific dangers in adopting passenger carrier security standards in a cargo airline environment.

## Introduction

Currently, and prior to the installation of the sealed, impenetrable cockpit doors we are now commenting on, FedEx Express management is pushing its pilots to resume carriage of thousands of company employees on business and personal travel. This pushing continues unabated, despite existing cockpit door "kick-out" panels throughout our entire fleet of aircraft. Even if it is assumed that our cockpit doors are completely fortified by virtue of whatever standard is adopted as a result of the rule debated here, that will in no way prevent or minimize the "similar threat" previously identified by FedEx management and acknowledged by the FAA Administrator. Where traditional passenger carriers have adopted procedures for flight attendants to assist in the management of cockpit door locks when one crewmember leaves the cockpit to visit the lavatory or galley, the cargo industry has no such personnel. All a perpetrator need do is wait for a cargo pilot to exit the cockpit, and, during that momentary breach in cockpit security, an invitation for an immediate forced entry is extended. In addition, there is currently no way to monitor the crawl space surrounding cargo containers on the main cargo deck for stowaways who intend to attack the flight crew.

## Background

Assuming that the purpose of this Final Rule is to prevent another terrorist incident on the scale of 11 September 2001, or one more devastating, then FPA must point out the inconsistencies in logic being applied to prevent such an attack from ever occurring. Although the FPA agrees with strengthening the cockpit door to improve its penetrable characteristics, we believe that the unique nature of cargo operations requires an additional layer of security—one that is missing from the proposed rule. We are thankful that, on at least one occasion, the FAA Administrator and FedEx

management acknowledged that our cargo operations face a threat similar to that of passenger carriers. (*See 66 FR 51546, 10/09/01.*) Each cargo pilot-in-command (PIC) must now also assume that, in addition to the risk of assault from employee and non-employee passengers, potential stowaways may board our aircraft. Cargo flights combine different attractive elements for terrorists. Federal Express pilots now serve England, France, Germany, Sweden, Israel, Turkey, United Arab Emirates, India, Malaysia, and the Philippines, as well as many other foreign countries where known terrorist groups have been identified by the U.S. State Department and other government intelligence organizations. In addition to carrying large quantities of fuel on international flights, our transoceanic flights are hours away from any suitable emergency runway with a rapid law enforcement response. In this environment, our crews are high above the seas, alone and without benefit of passenger, flight attendant, or air marshal intervention should an attack commence.

Shortly after the attacks on the World Trade Center and the Pentagon, FedEx Express Chairman Frederick W. Smith advocated, in a speech delivered to The Aero Club in Washington, D.C., on 25 September 2001, that the government “should provide armed, on-board security officers that travel throughout the U.S. commercial airline system, thereby always providing a potential threat to any hijacker.” (*See MOTION TO STRIKE OF FEDERAL EXPRESS CORPORATION, Docket OST-2001-10387-89 and Docket OST-2001-10388-67.*)

FPA agrees.

Unfortunately, our correspondence to management requesting Federal Air Marshals (FAMs), has never been answered.

Mr. Smith also stated in the same speech that “...air transport cockpit doors should be hardened, access to the cockpit should be limited, and appropriate procedures and equipment prescribed for the protection of our aircrews.”

FPA agrees.

Again, management has yet to respond in writing to multiple FPA requests for their written proposals on hardening doors, limiting access to the cockpit in flight, and procedures and equipment prescribed for the protection of our pilots. In fact, the only time FedEx Express management reduces any security position to writing is when they correspond with the FAA.

In an apparent contradiction to the public security proposals advocated by Mr. Smith, the Senior Counsel for Regulatory Affairs for FedEx Express, J. Mark Hansen, announced the following positions in Docket No. FAA-2001-111229-4543:

“FedEx strongly believes that the carriage of firearms or other weapons, aboard its all-cargo aircraft is unwise, unwarranted, and would result in a degradation of safety and security in its flight operations”

and

“FedEx does not favor the carriage of restraining devices aboard its all-cargo aircraft. We do not believe that the threat to our aircraft justifies the equipage of such devices, and submit that the careful screening of persons authorized to be carried aboard FedEx aircraft, as well as

strengthening of the cockpit doors, is a much better alternative. [...] Given that FedEx aircraft will be equipped with a secure and impenetrable cockpit door, we do not believe that pilots should leave the controls of the aircraft to become involved in a physical confrontation.”

These are peculiar statements for a company that experienced a violent attack on its flight crew in 1994. At one point in the struggle for Flight 705, all three crewmembers left the cockpit with the aircraft on autopilot, by no choice of their own, to engage in a “physical confrontation” in the skies over Arkansas with a disgruntled employee trained as a black belt in karate. What would Mr. Hansen have suggested in lieu of the crew’s spontaneous act of self-defense—remain in their seats until the hijacker pummeled them to death and crashed the DC 10 into the company’s Memphis sorting facility? Their heroic deeds physically removed the hijacker from the cockpit. FedEx management is reluctant to accept the fact that they have no in-flight security plan for preventing air piracy.

The challenge facing cargo aviation security is exacerbated by the changing crew complexion of modern transport category aircraft. Cockpits are quickly evolving into two-person cockpit configurations. Under “Hansen’s Theorem,” a pilot morphs into some sort of super-hero action figure during visits to the lavatory, and “persons authorized to be on board” would bow in subservience and honor the cockpit as sacrosanct in his absence. In reality, while one pilot is absent, the cockpit door is totally unguarded, unmonitored, and unlocked.

This convoluted logic defies comprehension.

If their reliance on background checks and screening prevents hijackers, stowaways, disgruntled employees, and psychiatric patients from committing air piracy, then why submit comments to the Administrator asking for strengthened doors and locks? And if their doors and locks, as well as their nonexistent in-flight policies and procedures regarding same, are secure, then why bother to screen individuals prior to boarding? Using Hansen’s Theorem, we might as well take the doors off the hinges and send them to the junkyard. Or, conversely, let’s quit searching and screening passengers, since the door becomes the ultimate solution.

Modern aviation demands multiple layers of security. The policies and procedures for defending pilots and our nation against the potential evildoers mentioned above, have not been conceived, tested, or implemented; hence, our public debate continues today. We Americans tend to focus on technological solutions, or minimum acceptable mechanical standards, to solve our current security problems—with little regard for the human factors involved in this anti-terrorism effort. FedEx Express, with its apparent reliance on criminal background checks and screening, evidently believes that security stops at the top of the stairs leading into the aircraft. When the door to the aircraft closes, they apparently believe that the aircraft pressurization system seals out all harm. They have absolutely no weapons, no restraint devices, and no policies and procedures to address any failure in their security plan.

There is no backup plan.

They cannot conceive of undetectable graphite weapons getting through screening. They refuse to acknowledge that every occupant in the aircraft has access to the crash ax in the cockpit. They do not accept that sympathetic ramp workers in the Middle East might plant weapons in advance of a flight,

mooting every one of their screening procedures. They will not acknowledge that any sharpened credit card can slice the throat of their pilots. Their “hear no evil; see no evil; speak no evil” position on the security of their flight operations is absurd.

Mr. Hansen goes on to assert that:

“FedEx believes that training or qualifications related to the use of lethal or less-than-lethal weaponry is wholly unrelated to existing systems for establishing and maintaining airman qualifications. As FedEx has no intention of allowing such weaponry aboard its all-cargo aircraft, such training is unnecessary.”

Without providing flight crews with the ability to carry weapons, including restraint devices that may help contain an attacker, Mr. Hansen and FedEx are totally relying upon a wing and a prayer that no ill wind will ever blow on any FedEx aircraft. Although such false confidence may be confused with security, FPA believes that FedEx pilots, their families, fellow employees, shareholders, and the nation at large deserve a truthful admission that cargo operations are at serious risk. No matter how much Mr. Hansen wants screening and door locks to replace the need for FedEx pilots to have access to weapons and restraint devices, his arguments simply do not rise to the level of security demanded in the 21<sup>st</sup> century. In its January 2001 “Strategic Plan,” published eight months prior to the events of 11 September 2001, the FAA predicted that all-cargo flights would be completely automated due to cargo terrorism by the year 2028.

The FPA refuses to yield to such a dark view of the future.

Federal Express possesses wide-body aircraft with the authorized capacity to carry between 2 and 29 traveling employee and non-employee passengers. A criminal records check would not have detected the perpetrator of the 1994 FedEx act of air piracy, but also would not have identified any of the Arab terrorists of 11 September 2001. The recent Aviation and Transportation Security Act does not require crosschecking Interpol records or CIA screening of aviation applicants, nor does it require the sifting of known terrorist lists circulated among State Department and other government intelligence agencies. Federal Express management will not affirm whether all employees will be required to undergo such checks.

At FedEx, management is relying on employment background checks as a primary response to 11 September 2001. Instituting simple measures within narrow application will not eliminate our broad security vulnerabilities. Background checks would not have detected the terrorists’ intentions, considering how long they planned and coordinated their attack. In a recent briefing given to the FEDEX PILOTS ASSOCIATION, former FBI Director and Delta Air Lines security chief John Otto told pilots that background checks are easily beaten by those determined to circumvent security screening. According to Otto, employment background checks can be easily circumvented through gaps in employment. He also cited applicants listing positions with high turnover in the employment history section of an application as another difficulty in identifying undesirables. These techniques, as well as others, provide effective cover for “sleeper agents” to penetrate our operation.

Of the tens of thousands of passengers Federal Express intends to resume carrying on its “all-cargo” aircraft, many have been undergoing psychiatric medical care. We currently have no system in place to track their medical history, unlike pilots, who are screened when they submit themselves to

routine FAA medical evaluations. Passengers who “jumpseat” on FedEx aircraft do not undergo any regular medical or psychiatric evaluation in order to determine their suitability for unescorted flight. In one case, a jumpseater actually vomited on the captain of the flight, and FedEx refused to release the medical records of the employee after the captain became ill. In another case, a jumpseater at FedEx confessed to a crewmember during pre-flight duties that he was taking an experimental, psychiatric anti-depressant that had yet to be approved by the Federal Drug Administration (FDA). After complaints from the crew, FedEx removed him from the flight and purchased him a commercial passenger ticket to his original destination.

Apparently, FedEx management sees limited criminal records checks, employment verifications, and crosschecking of internal personnel records as the solution to terrorism. The FAA recently broadened the rule requiring individuals having unescorted access to a security identification display area (SIDA) to undergo 10-year criminal records checks, which Fred Smith promoted as early as 25 September 2001, in his recommendations to The Aero Club:

“...new criteria must be established for providing background checks for all personnel that work in the air transport industry and who have access to commercial aircraft.”

and

“...there must be dramatic improvements in the security of all airport operating areas with stringent controls on access to the areas where commercial aircraft are located, and systemic security procedures for all equipment and supplies moving into these areas.”

Unfortunately, FedEx has only limited exposure to SIDA requirements, since each airport possesses unique SIDA geography. Cargo operators are viewed as remote tenants, unless their operations are contiguous to the passenger terminal and ramp areas. FedEx recently assumed the U.S. Postal Service contract, and, correspondingly, the postal security requirements for employees handling mail. Although this requirement has increased the number of employees subject to government security regulations, it by no means covers all of our employees.

FPA wishes to stress again that criminal records and background checks will not prevent terrorist attacks. Such measures, although well-intentioned, do not, by themselves, prevent the hiring of sleeper agents, foreign nationals, or mental patients, nor do they prevent disgruntled employees from boarding cargo flights as passengers. The latter category of employee presents a different “copy-cat” variation on the terrorist threat, similar to the recent incident of the teenage student pilot who flew his Cessna into a building in Florida.

On 20 February 2002, five illegal aliens who were arrested at the Atlanta airport used false documents to gain employment and SIDA badges. These five undocumented foreign nationals were arrested on charges of using false documents to obtain work with airport contractors Argenbright Security or ITS Security at Atlanta’s Hartsfield Airport. Although they were ultimately detected and arrested, they demonstrated that our system is in no way secure.

The U.S. Department of Transportation Office of Inspector General’s (DOTOIG) also reported on 14 February 2002, that:

[A former station manager] for Miami Aircraft Support, Inc., an airline cargo loader based in

Miami, FL, pleaded guilty to directing employees to falsify their applications for security identification display area (SIDA) badges at the Sacramento, CA, International Airport. At [his] direction, employees indicated on their applications that required verification and background checks had been completed, even though they had not. [The manager] also ordered providing the falsified applications to FAA. Further, investigators found the company did not verify employment history or conduct background investigations on new employees before they applied for SIDA badges. This is an ongoing case, which is being investigated by the OIG and the FAA. No sentencing date has been set.

Also, on 27 February 2002, DOTOIG announced that:

Twenty current and former employees at Boston's Logan International Airport were charged with providing false information on application forms to obtain SIDA badges, giving them access to secure areas at the airport. Of the 20, 15 were arrested on February 27 and three were subsequently arrested. The individuals allegedly provided false information on their applications for access badges by using false alien registration cards or Social Security numbers. The employees worked for security screening, refueling, food service, and other companies providing services at Logan. This investigation, which involved checking approximately 3,500 airport employees, was initiated by OIG in September 2001. Investigating the case with OIG were the Social Security Administration OIG and the Immigration and Naturalization Service, with assistance from the Massachusetts Port Authority, the airport operator.

Again, on 8 March 2002, DOTOIG reported:

Sixty-six workers were charged and 49 arrested at Charlotte-Douglas International Airport in North Carolina, for allegedly giving false information to gain employment entitling them to SIDA badges, which allow access to secure areas of the airport. The charges include making false statements, using fraudulent Social Security numbers, and using false alien registration information. The 66 individuals are employed by private companies providing services at the airport such as food services; aircraft fueling; baggage handling; cleaning and housekeeping inside the airport, on ramps leading to planes and on airplanes; and ground crew operations. OIG investigated this case with the Immigration and Naturalization Service, Social Security Administration OIG, FBI, and Federal Aviation Administration, with assistance from the City of Charlotte.

Although none of these incidents occurred on FedEx Express property, the trend is clear. We have already experienced problems with access security issues, and we will experience problems in the future, because no system is perfect. In 1999, the DOTOIG "Report on Audit of Airport Access Control, FAA Report No. AV-2000-017," identified the following access control vulnerabilities:

- Airport operators and air carriers are not successfully implementing procedures for controlling access,
- Employees not meeting their responsibilities for airport security,
- FAA not successfully implementing its oversight program for ensuring compliance with access control requirements, and

- FAA policies that contribute to weaknesses in access control.

According to a government source, the FEDEX PILOTS ASSOCIATION (FPA) discovered that, as recently as February 2002, a complete FAA security audit of personnel records at FedEx Express has not been completed in approximately four years. This lack of compliance with FAA security regulations does nothing to instill confidence in the pilots that their workplace is safe and secure, or that management's security solution is primarily based on background checks.

Structural improvement to a single cockpit door is only the first step in improving our country's air commerce and national security. The entire bulkhead and floor areas need immediate attention, and any of the proposed strengthening standards should be equally applied to these other integral cockpit-cabin components. On 10 May 1940, German forces overran Luxembourg and invaded the Netherlands and Belgium, and by 13 May they outflanked the Maginot Line. The current proposed security considerations in the design of the cockpit door resemble a modern-day, airborne version of a Maginot Line, which terrorists will simply "go around." We must broaden our capacity to think like terrorists in order to properly define the problem and offer concrete proposals that will serve as permanent solutions.

## **Solutions**

Short of sealing the bulkhead between the cockpit and cabin—which would give rise to extensive retrofitting of existing aircraft in the fleet, as well as requiring that a new external crew entry door be cut in the fuselage forward of the bulkhead—an internal "double door" modification is the most effective defense against unauthorized access to the cockpit. Such a new door design would enable discreet lavatory and galley access for crews by creating an instant "enclave" in which pilots could move about relatively threat-free and unharmed. Minimal lavatory and galley facilities could be temporarily isolated and made accessible to the flight crews by simply placing this additional door between passenger compartments and the aforementioned facilities. Procedures for closing the door furthest aft from the cockpit could be developed with cabin personnel assistance, or, in the case of cargo aircraft, with public address announcements, employee assistance, or automation. In both cargo and passenger aircraft, the aft door in such a "double door" system could be routinely shut during pre-departure and arrival procedures, to ensure that terrorists would at least be slowed if their attack begins during critical phases of flight.

As a complement to such a design, video cameras should be installed in the cabins to ensure compliance with a crew's announced and coordinated desire to leave the cockpit. Such cameras would also offer pilots the additional benefit of being able to monitor stowaway activity throughout a cargo flight, any assault in progress, as well as the effectiveness of firefighting and smoke evacuation procedures.

Stowaway or sleeper assault on a two-man cargo cockpit necessitates not only a double-door design and video camera monitoring, but the arming of pilots with lethal weapons in the cockpit as well, should the "impenetrable" nature of our cockpit door(s) ever be compromised again. Despite whatever structural improvements we adopt here today, any system can be penetrated given enough time. Simple and mechanical tools, as well as small amounts of Semtex, detonation cord, or other plastic explosive, could be stowed aboard aircraft in the same cargo container in which stowaways would conceal themselves.

Another cost-efficient method of adding another layer to cargo airline security is to codify the captain's authority to deny boarding to anyone he or she sees as a threat to the safety and security of the flight. Currently, Federal Express management does not acknowledge such captain's authority aft of the bulkhead, and has repeatedly implied that discipline will be taken against any captain who does not have adequate justification for exercising this authority. FPA does not agree, and has sought regulatory interpretation of the applicable Federal Aviation Regulations (FAR) in this post 11 September 2001 environment in a separate filing with FAA legal counsel.

Thank you for this opportunity to submit comments on this critical issue of national security.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Estabrook", written in a cursive style.

Capt. Mark Estabrook  
Chairman, FPA Security Committee